

DIVISION III

August 30, 2006

CARRIE RAPER

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F210237]

APPELLANT

v.

DREW MEMORIAL HOSPITAL
CROCKETT ADJUSTMENT, INC.

AFFIRMED

APPELLEES

This is a workers' compensation case, and the sole issue is whether substantial evidence supports the Arkansas Workers' Compensation Commission's decision that appellant Carrie Raper failed to prove by a preponderance of the evidence that she was entitled to additional temporary total disability (TTD) benefits for her compensable injury. We affirm.

Raper was working as an LPN at appellee Drew Memorial Hospital on September 5, 2002, when she was assaulted by a man who had entered the nursery where she was working. He choked Raper, punched her in the face, and sexually assaulted her. Raper suffered a neck injury and was diagnosed with post traumatic stress disorder, and her employer and its insurance carrier accepted the injuries as compensable and paid TTD benefits as well as medical benefits through February 2004.

On December 3, 2002, Dr. Pennington opined that Raper had no physical condition that would prevent her from returning to work, but he made it clear that his opinion was based solely on Raper's physical ability and not her mental ability. Raper, however, continued to receive care for her neck injury. In August 2003, Raper was treated with epidural steroid injections.

Throughout 2003 and 2004, various doctor reports indicate that Raper continued to suffer from muscle spasms. At the time of the hearing, Raper was taking muscle relaxers and pain medication as well as medication for depression and insomnia. She testified that all this medication made her drowsy.

Raper had two MRIs that failed to reveal any physiological reason for her continued neck pain. In October 2003, Dr. Covey, Raper's pain management physician, opined that Raper "has reached a plateau in her treatment at this point," and he transferred her treatment to Dr. Pennington. In February 2004, Raper was involved in an automobile accident but her subsequent CT scan and X-ray returned normal results. On May 17, 2004, Dr. Pennington opined that Raper suffered from chronic neck pain, depression, and anxiety and that she had not yet reached her "point of maximum medical benefit." He stated that Raper should continue chronic pain management as well as psychiatric follow-up and that "there is still significant room for improvement in her medical condition." In April 2004, Dr. Cathey, a neurosurgeon, opined that cervical disc surgery and/or any further neurosurgical intervention was not necessary. Raper received psychological treatment from 2002 to 2004 as well.

Once the TTD payments ceased in February 2004, Raper brought the present claim for additional benefits. The administrative law judge awarded additional TTD benefits after determining that Raper had not reached maximum medical improvement regarding her neck injury. The Commission, however, reversed the ALJ's opinion and found that Raper had failed to establish that she remained in her healing period while suffering a total incapacity to earn wages. Raper brings her appeal from this decision, arguing that the Commission's decision is not supported by substantial evidence.

In reviewing decisions from the Workers' Compensation Commission, this court views the evidence and all reasonable inferences in the light most favorable to the Commission's findings, and we affirm if substantial evidence supports the decision. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). Substantial evidence exists if reasonable minds could reach the same conclusion. *Id.* The Commission has the duty of weighing medical evidence, and the resolution of conflicting evidence is a question of fact for the Commission.

Stone v. Dollar Gen. Stores, ___ Ark. App. ___, ___ S.W.3d ___ (June 8, 2005). Moreover, the Commission can reject or accept medical evidence and determine the probative value to assign to medical testimony. *Hamilton v. Gregory Trucking*, ___ Ark. App. ___, ___ S.W.3d ___ (Mar. 16, 2005).

Arkansas statutes define the healing period as the period for healing of an injury resulting from an accident. Ark. Code Ann. § 11-9-102 (Supp. 2005). This court has held that the healing period is that period for healing of an accidental injury that continues until the employee is as far restored as the permanent character of his or her injury will permit, and it ends when the underlying condition causing the disability has become stable and nothing in the way of treatment will improve that condition. *Farmers Coop. v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002). A claimant is entitled to TTD benefits when he or she is still in the healing period and when he or she is totally incapacitated to earn wages. *Farmers Coop., supra*. The determination of when the healing period has ended is a factual determination for the Commission. *Id.* The mere persistence of pain does not prevent a finding that the healing period has ended so long as the underlying condition has stabilized. *Mad Butcher v. Parker*, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

Raper argues that the Commission made several findings of fact that were not supported by substantial evidence. While Dr. Pennington did state that Raper had not yet reached the point of “maximum medical benefit,” he also opined in the same report that his recommendation for treatment was chronic pain management and psychiatric follow-up. In an earlier report, Dr. Pennington had opined that Raper should be physically able to return to work. Dr. Cathey stated in an April 6, 2004 letter that Raper had two normal MRI scans of her cervical spine, and he ruled out any need for neurosurgical intervention. He noted that she would continue comprehensive pain management with another physician. Dr. Covey explained that Raper had “reached a plateau in her treatment,” and he transferred her medication management to Dr. Pennington.

Even though Raper still complains of pain, the medical evidence indicates that her underlying condition has stabilized and that she is as far restored as the permanent character of

his or her injury will permit. Thus, substantial evidence supports the Commission's decision that Raper's healing period had ended and that she was not entitled to any additional TTD benefits.

Moreover, even if this court found that Raper continued in her healing period, she failed to prove that she remained totally incapable of earning wages. Dr. Pennington stated that Raper was physically able to return to work on December 3, 2002. During the course of treating Raper, Dr. Pennington never changed his opinion regarding Raper's physical ability to return to work. No other treating physicians expressed opinions regarding Raper's capacity to work. Raper testified that she felt she could not return to work, but she failed to prove by a preponderance of the evidence that she was totally incapacitated to earn wages. Thus, the Commission's decision that Raper did not suffer a total incapacity to earn wages is supported by substantial evidence.

Affirmed.

BIRD and BAKER, JJ., agree.